



The Comptroller General
of the United States

Washington, D.C. 20548

22/Kowitz

Decision

Matter of: Sentry Fire & Welding Supply
File: B-224058
Date: November 13, 1986

DIGEST

Protest that procurement of oxygen supply services on a state-wide basis discriminates against small businesses is without merit where the record establishes reasonable competition from small business concerns, which submitted the three lowest bids.

DECISION

Sentry Fire & Welding Supply protests the terms of invitation for bids (IFB) No. 644-1-87, issued by the Veterans Administration Medical Center, Phoenix, Arizona. Sentry contends that the solicitation discriminates against small businesses and thereby unduly restricts competition by combining services to be performed throughout Arizona into a single contract.

We deny the protest.

The solicitation, issued on July 23, 1986, sought bids to supply and service oxygen concentrators and cylinders at the homes of approximately 190 VA beneficiaries in Arizona. About 90 percent of the patients to be served are located within the same county as the VA Medical Center. An average of one patient per county resides in the remainder of the state.

Seven firms, including three small business concerns, submitted bids in response to the IFB. The protester did not bid, stating that it was effectively precluded from the competition by the scope of the procurement. Bids were opened on August 26, and the contracting officer found that the bid prices were both reasonable and competitive. The VA proceeded with the award of a contract to Apollo Medical, Inc., a small business concern, upon VA's determination that it had an urgent and compelling need to maintain medical services that would not permit delay pending our protest decision.

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Sentry contends that a single contract for all work in Arizona overly restricts competition by discriminating against small businesses, which cannot efficiently provide services in such a large area. According to the protester, only a large business with offices located in the various regions of the state can competitively provide the required services. Sentry proposes that multiple awards be made on a county-by-county basis, so that it can submit a bid to provide services in two counties. Sentry also believes that VA beneficiaries receive better care from local oxygen providers.

When challenging restrictive terms of an IFB, a protester must present some support for its allegation that the restriction exceeds the agency's minimum needs. If the protester provides this support, the burden shifts to the agency to establish prima facie support for its contention that the restrictions it imposes are reasonably related to its needs. See Cleaver Brooks, B-213000, June 29, 1984, 84-2 CPD ¶ 1.

Sentry's only support for its contention that the procurement is overly restrictive is the fact that it cannot bid to supply services on a state-wide basis. The fact that a particular firm or class of vendors is precluded from the competition does not itself make the specification unduly restrictive. See The Trane Co., B-216449, Mar. 13, 1985, 85-1 CPD ¶ 306. Even if we accept Sentry's bare allegations as sufficient support to require the VA to justify its decision to procure on a state-wide basis, we believe that the record supports the agency's decision.

In April 1986, the VA studied whether it was supplying oxygen to Arizona beneficiaries by the most economical means. This study required the agency to locate and contact a number of Arizona oxygen supply companies. With its knowledge of the market for the required services, the VA is concerned that there would be insufficient competition to supply services in some areas if separate contracts are used, and it believes that multiple contracts threaten a loss of continuity of care if VA beneficiaries move.

We have no reason to question the VA's determination, particularly in view of the fact that of the seven bids submitted, the three lowest bids were by small business

concerns. Clearly the IFB did not discriminate against small businesses, and Sentry offers no evidence contrary to the agency's determination that continuity of patient care benefits from a state-wide contract.

The protest is denied.

John F. Mitchell
for Harry R. Van Cleve
General Counsel